

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

THE MUCKLESHOOT INDIAN TRIBE,) Civ. No. 03-3775JLR
)
Plaintiff,)
) SETTLEMENT AGREEMENT
v.)
)
THE NATIONAL MARINE FISHERIES)
SERVICE; and D. ROBERT LOHN, Regional)
Administrator, National Oceanic and)
Atmospheric Administration, in his official)
capacity,)
)
Defendants,)
)
and)
)
THE CITY OF SEATTLE,)
)
Defendant-Intervener.)
_____)

A. BACKGROUND

A.1 PARTIES

The parties to this Agreement (also referred to as “Settlement Agreement”) are the Muckleshoot Indian Tribe (Tribe) with its chief administrative offices at: 39015 172nd Avenue SE, Auburn, Washington 98092, and the City of Seattle (City), with its chief administrative offices at: Seattle Tower, 700 5th Avenue, Suite 4900 Seattle, Washington 98124-4018

1 A.2. NATURE OF SETTLEMENT

2 This Settlement Agreement is intended to settle all issues in this case and provide a basis for
3 dismissal of the claims. In the course of settlement negotiations regarding the issues raised in the
4 present lawsuit, the Tribe and the City saw an opportunity also to resolve the Tribe's long-
5 standing assertion that the Cedar River Project has damaged fish runs in the Cedar River/Lake
6 Washington Basin, and that the Tribe is entitled to compensation and mitigation for such
7 damage. As those discussions progressed, the Parties also addressed the Tribe's exercise of its
8 Treaty rights to hunt and gather in the Cedar River Municipal Watershed, the Tribe's interest in
9 wildlife management in the Watershed, and the Tribe's interest in conducting traditional
10 activities there. Part 2 of this Settlement Agreement addresses these subjects and resolves the
11 Tribe's claim against the City for damages to fish runs in the Cedar River/Lake Washington
12 Basin and impairment of Treaty rights.

13 A.3 LITIGATION HISTORY

14 On December 3, 2003, the Tribe filed an action against the National Marine Fisheries
15 Service (NMFS) and its Regional Administrator (in his official capacity) challenging the
16 Endangered Species Act exemption granted by the NMFS for certain aspects of the City's Cedar
17 River Water Project (Project). Specifically, the Tribe challenged the approval of the Habitat
18 Conservation Plan (HCP) for the Project; the corresponding Incidental Take Permit (ITP);
19 issuance of the Biological Opinion (BiOp.); the Incidental Take Statement for the HCP and the
20 Environmental Assessment (EA) for the HCP; and the approval of the related Implementation
21 Agreement (IA) and Instream Flow Agreement (IFA). The NMFS filed its answer on February
22 13, 2004.

23 The City moved to intervene in this proceeding on March 15, 2004. That unopposed
24 motion was granted on April 21, 2004. The City filed its answer to the Tribe's complaint on
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1 April 23, 2004.

2 The Tribe, the City, and NMFS agreed to engage in settlement discussions, which
3 resulted in this Agreement. The settlement discussions and this Agreement are not, and shall not
4 be deemed to be, an admission of liability by any party. This Agreement is not intended to
5 address any issues that may exist between the City and Tribe except as expressly identified and
6 addressed herein.

7 A.3 DEFINITIONS

8 A.3.1 CEDAR RIVER PROJECT: When the name “Cedar River Project” is used in
9 this Agreement, it means the City of Seattle’s water supply and hydroelectric operations on the
10 Cedar River and the attendant facilities, including, but not limited to: the Landsburg Diversion
11 Dam, the Masonry Pool, the Masonry Dam, the Overflow Dike, the Chester Morse Lake
12 reservoir and attendant pumping facilities, the fish passage facilities, the Hydroelectric Plant, the
13 Penstocks, Lake Youngs reservoir, and the Cedar River treatment plant.

14 A.3.2 ANNUAL AVERAGE DIVERSION: As used in this Agreement, “Annual
15 Average Diversion” means the average of all the daily diversions from the Cedar River during a
16 single calendar year. The term does not apply to the City’s instantaneous diversions (Q_i), which
17 are significantly greater than the annual average.

18 A.3.3 DIVERSION AND DIVERT: As used in this Agreement, “Diversion” and
19 “Divert” include both surface water diversion and groundwater withdrawal affecting the Cedar
20 River.

21 A.3.4 CEDAR RIVER WATERSHED, CEDAR RIVER MUNICIPAL WATERSHED,
22 WATERSHED: As used in this Agreement, “Cedar River Watershed, Cedar River Municipal
23 watershed, and Watershed” all refer to the land owned by the City (about 90,546 acres) in the
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upper part of the Cedar River Basin, upstream from the City's water intake at Landsburg Diversion Dam.

SETTLEMENT AGREEMENT PART 1

B. AGREEMENTS

In consideration of the Tribe's dismissal with prejudice of this case against the City and NMFS, and subject to the reservations and other terms set out herein, the City and Tribe agree as follows.

B.1 LONG TERM FLOW REQUIREMENTS AND DIVERSION LIMITS

The parties have agreed to certain maximum water diversions from the Cedar River by the City and that certain minimum flows will remain in the river. These diversion limits and flow requirements shall continue in perpetuity, unless altered by mutual agreement of the Tribe and the City.

B.1.1 LIMITS ON WATER DIVERSIONS

a. Beginning on January 1, 2031, and continuing in perpetuity, the City shall limit its water diversions from the Cedar River as set out in this section (B.1.1).

b. The City's Annual Average Diversion of water from the Cedar River shall not exceed 124 million gallons per day (mgd) in any single calendar year. This shall establish the maximum average amount of water the City can divert from the Cedar River in a single year for any purpose.

c. In addition to the limits on City water diversions set out in section B.1.1.b. above, beginning in the year 2051 the City shall operate the Cedar River Project to assure that, in any 10-year period, the average of the Annual Average Diversions of water from the Cedar River shall not exceed 114 mgd. The first calculation of the 10-year average

1 shall be made in the year 2061, by calculating the average of the Annual Average
2 Diversions for the years 2051 to 2061. The calculation will then be repeated each year as
3 a rolling average based on the 10 years immediately preceding the year in which the
4 average is being calculated.

5 B.1.2 SYSTEM DEMAND, STORAGE AND WINTER FLOW

6 a. The City will continue to manage its diversions, and its storage capacity in
7 Chester Morse Lake and the Masonry Pool in a manner similar to past diversion and
8 storage practices.

9 b. The City will continue (through and beyond the term of HCP) to
10 emphasize operations that respect and preserve natural hydrologic events, such as
11 allowing freshets to pass undiverted; maintaining strict downramping prescriptions; and
12 working closely with the Tribe and Instream flow Committee (IFC) on optimizing
13 reservoir refill strategies.

14 c. The City will provide an annual hydrologic report to the Tribe
15 demonstrating compliance with the intent of the Agreement. The City-Tribal Policy
16 Committee will determine the frequency of meetings to periodically review long-term
17 hydrologic patterns.

18 d. Upon request by the City, the Joint City-Tribal Policy Committee will
19 consider allowing the City to modify the historic seasonal customer demand and storage
20 pattern, including consideration of modifications (such as the potential for aquifer
21 recharge) that would increase the City's Average Annual Diversions above the limits set
22 by sections B.1 and B.2 of this Agreement. If the Tribe so agrees, then the City may,
23 subject to the terms of any Tribal agreement, modify the historic system demand and
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1 storage patterns. The Tribe is under no obligation to agree and the Tribe's agreement or
2 refusal to agree shall not be subject to dispute resolution.

3 e. Whether or not the HCP continues in force, the City will continue to fulfill
4 its commitments as stated in the IFA to fund ongoing investigations by the IFC intended
5 to inform the Parties on the attributes of various aspects of the natural hydrograph.

6 B.1.3 INSTREAM FLOWS

7 a. Section B "Instream Flows Below Landsburg Dam," of the IFA contains a
8 flow regime that includes specific minimum flows, supplemental flows, and critical
9 minimum flows for the Cedar River. That section of the IFA is attached hereto and
10 incorporated herein. The City shall manage the Cedar River Project to achieve the IFA
11 flow requirements in perpetuity, notwithstanding any termination of the IFA and/or the
12 HCP. If the Cedar River Flow Oversight Commission identified in section F of the IFA
13 no longer exists at some time in the future, the duties of the Commission shall be carried
14 out by a substantially similar group composed of the Tribe, City, and federal and state
15 regulatory agencies.

16 b. The City and Tribe will work cooperatively to assure that the flow regime
17 set out in Section B of the IFA continues to be the minimum flow regime required by the
18 Department of Ecology or other applicable state or federal regulator. The City shall
19 continue to manage the Cedar River Project to achieve the flow regime set out in Section
20 B of the IFA regardless of any regulatory determination that lower minimum flows would
21 be allowed. Provided, however, that the minimum flow requirements may be adjusted
22 downward, as set forth in Section E.2.d of the IFA, if both the City and the Tribe are
23 among the members of the Instream Flow Commission who vote for the modification.

1 B.1.4 DEDICATION OF CITY WATER RIGHT

2 a. The City agrees to transfer the portion of its perfected water right claim
3 that exceeds 124 mgd (Annual Average) to the State Water Trust for the purpose of
4 providing instream flows. The transfer will be in a form acceptable to the Tribe and will
5 be in perpetuity. The transfer will be revocable only by mutual agreement of the Tribe
6 and the City. The City shall complete the transfer as soon as practicable after this
7 Agreement is approved by the Court. Should the City fail to or be unable to complete the
8 transfer as provided above, the City shall transfer that portion of its Cedar River water
9 right to the Tribe upon the Tribe's request. If the City does transfer a portion of its water
10 right to the Tribe, the Tribe agrees to dedicate the water right transferred to instream
11 flows. The City shall not take any action that would assist or allow another party to
12 divert waters from the Cedar River. The City and Tribe shall take all available actions to
13 insure that the portion of the City's water right and claim above 124 mgd shall be used to
14 provide instream flows.

15 B.1.5 CITY WATER CONSERVATION EFFORTS

16 The City shall continue conservation efforts with respect to its direct retail customers.
17 The City shall, in all new wholesale contracts, include a provision that the wholesale customer, at
18 a minimum, shall implement conservation measures that are substantially similar to those
19 imposed by the City on its own retail customers. The City shall, to the extent it is legally able,
20 and in all cases shall use its best efforts, to encourage conservation efforts by its existing
21 wholesale customers. Nothing in this section is intended to limit the City in applying more
22 rigorous conservation measures than are now in place.

23 B.2 SHORT TERM DIVERSION LIMITS

24 The Cedar River diversion limits established in section B.1 above remain in place in
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1 perpetuity. However, the parties recognize that it is appropriate to include different diversion
2 limits in the short term. Thus, the parties have agreed to a series of diversion limits to be
3 implemented between the date that this agreement is approved by the court and 2051.

4 B.2.1 DIVERSION LIMIT THROUGH 2020

5 From the date that this Agreement is approved by the Court through December 31, 2020,
6 the City's Annual Average Diversions of water from the Cedar River shall not exceed 105 mgd
7 in any calendar year.

8 B.2.2 DIVERSION LIMIT 2021-2030

9 From January 1, 2021 through December 31, 2030, the City's Annual Average Diversion
10 of water from the Cedar River shall not exceed 110 mgd in any calendar year.

11 B.2.3 DIVERSION LIMITS 2031-2050

12 a. Rolling Average Diversion. From January 1, 2031 through December 31,
13 2050, in addition to the limitation set out in section B.1.1a. and b. above, the City shall
14 operate the Cedar River Project to assure that in any 10-year period between 2031 and
15 2050, the average of the Annual Average Diversions from the Cedar River shall not
16 exceed 110 mgd. The first calculation of the 10-year average shall be made in the year
17 2041, by calculating the average of the Annual Average Diversions for the years 2031 to
18 2041. The calculation will then be repeated each year as a 10-year rolling average such
19 that the calculation shall be based on the 10 years immediately preceding the year in
20 which the average is being calculated.

21 B.2.4 CASCADE WATER ALLIANCE AND TOLT RIVER RELICENSING 22 CONTINGENCY

23 a. The parties have recognized and accommodated two possible future
24 contingencies: (1) that the Federal Energy Regulatory Commission (FERC) will be
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1 relicensing the City's South Fork Tolt River Project, which could reduce the water supply
2 available from that source; and (2) that Cascade Water Alliance, a current wholesale
3 customer of the City, may request additional water from the City beyond that anticipated
4 in existing contracts with the City. The provisions of this Agreement fully account for
5 any impacts from the Tolt FERC relicensing or future demands made by the Cascade
6 Water Alliance.

7 b. Between 2031 and 2050, the City may use 114 mgd as the 10-year rolling
8 average in lieu of 110 mgd if, but only if:

9 1. The City is compelled to provide a greater amount of water to
10 Cascade Water Alliance as a wholesale customer than those amounts set out in the
11 January 1, 2004 contract between the City and Cascade Water Alliance; provided
12 that the City has applied all available legal tools in an effort to avoid being
13 subjected to increased obligations to Cascade Water Alliance; and/or

14 2. The FERC imposes license conditions on the City's South Fork
15 Tolt River Project (Tolt) which, after fully utilizing all of the City's available
16 water sources, including conservation, will reduce the City's system-wide Firm
17 Yield unless the rolling average of the annual average diversion of water from the
18 Cedar River was increased from 110 mgd to 114 mgd and the following
19 conditions are met:

20 i. The FERC license conditions that reduce the water supply
21 available from that source are actually implemented; and

22 ii. In the case of the Cascade Water Alliance contingency, the
23 City provides the Tribe at least five years notice that it is possible that the
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contingency may be invoked so that the Tribe and City can work together to minimize the impact of the application of the contingency; and

iii. The City's rolling average may exceed 110 mgd only for that period and to the extent either the Cascade Water Alliance water requirements or the FERC licensing conditions on the South Fork Tolt River Project necessitates increasing the City's diversions of water from the Cedar River. The City shall use its best efforts to develop alternate water supplies as quickly as possible that will permit the City to reapply the 110 mgd rolling average limitation.

3. In no event may the 10-year rolling average of the annual average diversion from the Cedar River exceed 114 mgd.

B.3 USE OF DEAD STORAGE AND PUMPS

a. Dead Storage at Chester Morse is the volume of water stored below the historic natural outlet elevation of 1532 feet. The parties acknowledge that there may be up to three different uses for the water stored at Chester Morse, as follows: 1) normal water supply operations utilizing water stored in Chester Morse above elevation 1532 feet; 2) drought or emergency water supply use of water stored in Dead Storage; and 3) permanent augmentation to either instream flows and/or water supply using water stored in Dead Storage. The Tribe agrees that the City may use water stored in Chester Morse for these three different uses, as specified below.

b. For normal water supply, the Tribe acknowledges that the City may use water stored in Chester Morse, above the 1532 level. Due to hydraulic limitations and changing sedimentation conditions in the outlet channel, pumps may be needed for such use. The City agrees to notify the Tribe prior to mobilization of the pumps for such

1 purpose.

2 c. For drought or emergency water supply conditions, the Tribe
3 acknowledges that the City may use water stored in Dead Storage using pumps or other
4 means. During these situations, the City will abide by the conditions of any applicable
5 Ecology permit, the provisions of Section B. of the Instream Flow Agreement (IFA), and
6 applicable regulatory requirements. Whether or not the City is required to do so by
7 permit or regulation, the City also will implement conservation elements of its Water
8 Shortage Contingency Plan (as updated in the City's Water Supply Plan), before using
9 water from Dead Storage due to drought or emergency conditions.

10 d. For permanent augmentation, the Tribe and the City recognize that use of
11 Dead Storage, in addition to drought or emergencies may benefit both parties, therefore
12 they agree to consider such uses through the Joint City-Tribal Policy Committee
13 described in Section B.4. Provided, however, that the City may only use water from
14 Dead Storage to increase its diversions from the Cedar River above the limits set forth in
15 Sections B.1 and B.2 if the Tribe agrees in writing. The Tribe is under no obligation to
16 agree and the Tribe's agreement or refusal to agree shall not be subject to dispute
17 resolution.

18 e. The Tribe also understands that the City will continue to serve in its
19 normal role in seasonal flood control operations to protect instream resources, facilities,
20 and property. The City will consult on such activity, as appropriate, with King County,
21 state and federal agencies, and the Tribe.

22 B.4 JOINT CITY-TRIBAL POLICY COMMITTEE

23 a. There is established the "Joint City-Tribal Policy Committee (Committee).
24 The Committee shall be composed of the Director of Seattle Public Utilities and the
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1 Muckleshoot Tribal Fisheries Commission, or their delegates. Decisions of the
2 Committee shall be by consensus where the City and Tribe shall each have one vote.
3 Either party may invite additional staff or policy representatives to attend and participate
4 as non-voting members in any Committee meeting. The primary purposes of the
5 Committee are to monitor the implementation of the Agreement and identify and
6 address issues that arise in the implementation of the Agreement, and to participate in
7 dispute resolution as provided in Part III, Section A.1.c. of this Agreement.

8 b. By mutual agreement of the City and the Tribe, the Committee may
9 address other matters that relate to the Cedar River Project.

10 c. The Committee will convene when either party requests a meeting, but in
11 any event shall meet at least once each calendar year to assess compliance with this
12 Agreement.

13 B.5 MONITORING AND SHARING OF DATA

14 a. The City shall provide the Tribe with data concerning the City's water
15 diversions from the Cedar River on a monthly basis. Upon request by the Tribe, the City
16 will also provide data regarding the City's diversions from the South Fork of the Tolt
17 River and the City's well fields.

18 b. The City will provide the Tribe with reasonable access to the project
19 works and the Cedar River watershed so that the Tribe can monitor compliance with this
20 Agreement, and the HCP and any related agreements to the HCP.

21 B.6 RELATIONSHIP TO HCP

22 Nothing in this Agreement is intended to limit or modify any of the obligations of the
23 City nor any rights of the Tribe under or with respect to the HCP or any "Related agreements" to
24 the HCP except as set out in section B.7.

1 B.7 SETTLEMENT OF CLAIMS

2 a. As long as the City is in compliance with the terms of Part 1 of this
3 Agreement, Part 1 of this Agreement settles all claims that the Tribe may have pertaining
4 to the issuance and terms of the Cedar River Project ITPs dated April 21, 2000 by the
5 National Marine Fisheries Service and the United States Fish and Wildlife Service, and
6 the adoption and terms of the Cedar River HCP as that document was approved by the
7 Seattle City Council on July 12, 1999, including the agreements accompanying the HCP,
8 whether such claims are presently known or unknown, fixed or contingent, and,

9 b. As long as the City is in compliance with the terms of Part 1 of this
10 Agreement, the Tribe agrees not to seek to impose different flow requirements or water
11 diversion limits from the Cedar River than set out in section B.1 and B.2 of this
12 Agreement or to seek modification to the Instream Flow Agreement.

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14 SETTLEMENT AGREEMENT PART 2

15 A. BACKGROUND

16 A.1 PURPOSE

17 Part 2 of the Settlement Agreement resolves those issues identified in subpart K of Part 2.

18 A.2 OTHER AGREEMENTS

19 The Tribe and City agree that the Tribe should become a Party to the Landsburg Mitigation
20 Agreement (“LMA”) for the Cedar River Habitat Conservation Plan (“HCP”). The Tribe will
21 execute a signatory page for the LMA concurrent with the execution of this Settlement.
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1 B. SOCKEYE HATCHERY

2 B.1 FUNDING

3 a. In the Landsburg Mitigation Agreement, the City agreed to design, plan,
4 construct, and operate a Sockeye hatchery located on the Cedar River. The LMA
5 requires the City to spend up to \$21,709,000 (in 1996 dollars, adjusted annually for
6 inflation or deflation) “for the design, permitting (including construction mitigation),
7 construction, and operation of a sockeye hatchery to replace the interim hatchery at
8 Landsburg.....” (LMA, Section D.1.a.); and \$3,474,000 (in 1996 dollars adjusted
9 annually for inflation or deflation), “to monitor the performance and potential impacts of
10 the Sockeye fry production facility.” (LMA Section D.3.d.) The combined total of these
11 required funding categories is \$25,183,000. When this amount is adjusted to 2005 dollars,
12 it is \$30,521,796.

13 b. The City now reaffirms its commitment to build the replacement Sockeye
14 hatchery and commits to operate the hatchery until the year 2051, unless the City is
15 legally precluded from doing so, or the Tribe agrees that the hatchery operations should
16 cease. The City will apply the full weight of its legal and political authority in support of
17 the design, planning, construction and operation of the sockeye hatchery, as described in
18 the LMA. The City shall take any legal actions available and necessary, including
19 available appeals, to support and/or defend the sockeye hatchery. The City will not
20 exercise any authority it may have to terminate construction or operation of the Sockeye
21 hatchery before 2051 without the concurrence of the Tribe.

1 B. 2. ALTERNATIVE MITIGATION

2 The LMA provides: “If at any time all Parties to this LMA agree that the replacement
3 Sockeye hatchery is no longer appropriate, then the City will commit any remaining
4 construction, operation, and/or monitoring funds to alternative mitigation at a level and
5 according to a schedule that does not exceed the total of its original commitments for the
6 Sockeye fry production program as set out in Section C.1.a. of the LMA. The form of the
7 alternative mitigation shall be as agreed by the Parties, but in the event that no agreement is
8 reached by two years after the Parties begin deliberations on the issue, the City shall spend any
9 remaining funds for fish habitat acquisition, restoration, or enhancement in the Lake Washington
10 Basin.” (LMA, Section D.1.c.) The LMA also provides: “If the Sockeye fry production program
11 is discontinued according to the provisions set forth in subsection D.1.c. during the term of this
12 LMA, or if the City is unable to complete construction of the replacement Sockeye hatchery,
13 then the City will commit remaining monitoring funds, at a level not to exceed the total of its
14 original commitments, to alternative mitigation as directed by the Parties pursuant to subsection
15 D.1.c.” The Tribe and the City now agree that if the City is unable, after using its best efforts and
16 all legal avenues, to secure the necessary permits for the hatchery, or if a governmental entity
17 with jurisdiction orders the City to cease operating the hatchery after it is constructed, then the
18 Tribe and the City shall take the position that, “the replacement Sockeye hatchery is no longer
19 appropriate,” and shall invoke the LMA provision for using the remaining funds for alternative
20 mitigation

21 B.3. ADDITIONAL MITIGATION

22 The City expects to spend substantially more than the amount that the LMA requires the
23 City to spend on the Sockeye hatchery. If the City is unable, after using its best efforts and all
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1 legal avenues, to obtain the necessary permits for the hatchery, or if a governmental authority
2 with jurisdiction orders the City to cease operating the hatchery after construction but during the
3 term of the HCP, or if the LMA Parties all agree that “the replacement Sockeye hatchery is no
4 longer appropriate,” then the City will provide the Tribe with additional funds for fishery related
5 purposes.

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7 B.3.1. The amount of the funds to be provided to the Tribe in lieu of the hatchery will be
8 calculated as follows: \$45 Million minus \$30,521,796 (which is the amount the LMA requires
9 be spent on the hatchery or alternative mitigation agreed upon by all the Parties, adjusted to
10 2005 dollars) equals \$14,478,204. The amount of the City’s actual, direct, hatchery-related
11 costs, if any, that are not included in the \$30,521,796, will be deducted from \$14,478,204 and
12 the remainder shall be provided to the Tribe. Costs that may be deducted from the \$14,478,204
13 include, but are not limited to, time and expenses incurred by the City, whether by City
14 employees or outside consultants and contractors, to design, get permits (including defending
15 against appeals), construct, operate, and monitor the hatchery. Administrative or overhead
16 costs that are not specifically necessary for the hatchery project are not deductible. The City, at
17 least yearly, will provide the Tribe with a spread sheet and such other expenditure information
18 sufficient for the Tribe to determine how funds under this section are expended, and, at the
19 Tribe’s request, appropriate City staff will be available to the Tribe to explain such
20 expenditures. Any audit prepared by or for the City in the normal course of business which
21 includes expenditures under this section will be made available to the Tribe upon request.

22 B.3.2. The Tribe shall determine how the additional funds will be spent, provided that at
23 least sixty percent (60%) of these additional funds shall be used for fishery purposes in the Cedar
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1 River/Lake Washington Basin, unless the City and the Tribe agree that the funds may be spent
2 elsewhere. Projects may include, but not be limited to, repair and operation of the interim
3 Sockeye hatchery, construction of a spawning channel, and acquisition or restoration of fish
4 habitat. The City shall have up to ten years to provide to the Tribe the full amount of the
5 additional funds, which will be adjusted annually for inflation or deflation, plus four percent
6 (4%) interest from the date this provision is triggered until paid. There is no penalty for pre-
7 payment. For purposes of this Settlement, wherever an inflation or deflation calculation is
8 required, the Consumer Price Index – All Urban Consumers, Seattle-Tacoma-Bremerton area
9 shall be used.

10 B.4. TRANSFER OF HATCHERY FACILITY

11 Should the Sockeye hatchery cease to operate as a Sockeye hatchery, the City shall offer
12 to transfer the Sockeye hatchery to the Tribe without cost. The Tribe shall have ninety days to
13 accept the transfer in writing, or the Tribe shall be deemed to have declined. The transfer shall
14 include all land and fixtures located on the hatchery site, but not land and facilities (such as
15 springs used for broodstock water) that are not on the hatchery site. In addition, the Tribe at the
16 time of transfer shall receive a non-exclusive easement to travel on City property, subject to
17 reasonable City regulation, for the sole purposes of operating and maintaining facilities (such as
18 the hatchery water system) that are associated with the sockeye hatchery and are located on City
19 property, and for accessing the hatchery water source. The City shall also transfer to the Tribe,
20 without charge, any water right that has been used for operation of the hatchery.

21 B.5. INTERIM HATCHERY

22 The City shall continue to fund the operation of the interim Sockeye hatchery until the
23 replacement hatchery is operational, unless all of the LMA Parties agree that the interim hatchery
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1 should cease operation or a governmental entity with jurisdiction orders the City to cease
2 operating the hatchery

3 C. FISHERY FUNDING

4 The City will pay the Tribe:

5 C.1 \$9,000,000 to be administered exclusively by the Tribe and used for fishery purposes.

6 The funds set out in this section shall be paid to the Tribe no later than December 31, 2015.

7 C.2 \$5,000,000 to be administered exclusively by the Tribe and used for fishery purposes.

8 The funds set out in this section shall be fully paid to the Tribe no later than September 1, 2006.

9 C.3 Character of funds: All funds identified in this section shall be in 2005 dollars and shall
10 be adjusted annually for inflation or deflation, plus four percent (4%) annual interest, until paid.

11 There is no penalty for pre-payment.

12 D. CEDAR RIVER HABITAT LANDS

13 At any time that lands in the Cedar River watershed below the Landsburg Dam that have
14 been purchased by the City with funds required by the HCP for acquisition of fish habitat: (1)
15 cease to be used for fish habitat purposes, or (2) any conservation easement applicable to such
16 lands expires or is removed, or (3) the City seeks to transfer title to such lands to a third party
17 without a perpetual conservation easement for fish habitat purposes, then the City shall offer to
18 transfer the lands to the Tribe at no cost. The Tribe shall have ninety days to accept the transfer
19 in writing, or the Tribe shall be deemed to have declined. If the Tribe accepts the lands then the
20 Tribe will manage the lands as fish habitat.

1 E. LAND TRANSFERS

2 The City shall:

3 E.1. Transfer to the Tribe the following properties (legal descriptions are in Exhibit A) in fee
4 simple and without encumbrances that would limit the right or ability of the Tribe to utilize such
5 lands for traditional purposes and for hunting, gathering and fishing purposes reserved by Treaty:

6 E.1.1 North Fork parcels in Green River Watershed, approximately 800 acres; and

7 E.1.2 MacDonald Mountain parcels in Green River Watershed, approximately 500 acres.

8 E.2. The City shall transfer title to the two Green River parcels to the Tribe within thirty (30)
9 days of the approval of this Settlement Agreement by the Court.

10 E.3. The City shall use its best efforts to complete acquisition of the Yakima Pass property
11 (legal description in Exhibit B) by December 31, 2006. Upon completion of the City's
12 acquisition, the City will immediately transfer title to the Tribe, subject to the conservation
13 easement required by the City's Schultz-Echo Lake Transmission Line Project Settlement
14 Agreement with the Bonneville Power Administration. A copy of the required conservation
15 easement language is attached to this Agreement.

16 E.4. The City will take steps within its legal authority to post the Yakima Pass lands advising
17 those persons passing through such lands on the Pacific Crest Trail that they must remain on the
18 trail.

19 E.5. Zoo Land: By December 31, 2006, the City shall first, transfer to the Tribe the "Zoo
20 land" (legal description is in Exhibit C), or, second, if transfer of fee title is not possible, transfer
21 to the Tribe a perpetual conservation easement on the Zoo land that protects use of the land by
22 deer and elk and their ability to access the White River, and the right of Tribal members to
23 exercise Treaty reserve rights on the lands and access for the purpose of wildlife management,
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1 or, if the first and second options are not possible, then, third, shall pay the Tribe \$1 Million (in
2 2005 dollars, adjusted for the annual rate of inflation or deflation until the time of payment plus
3 4% annual interest until paid). Should the City retain ownership of the Zoo Land, the City does
4 not intend to interfere with the Tribe's exercise of its reserved treaty rights in a manner that is
5 consistent with the City's use of the property for purposes related to the Woodland Park Zoo, as
6 provided in Seattle City Ordinance 118610. If at any time in the future the City should decide to
7 sell the Zoo Land or to transfer ownership to an entity unrelated to the City, the Tribe shall have
8 a right of first refusal allowing the Tribe to purchase the property for fair market value, all cash,
9 unless the City agrees to different payment terms. The Tribe must exercise its right to purchase
10 the property within one hundred and twenty days of receiving notice from the City that the City
11 intends to sell or transfer the Zoo Land.

12 **F. Cooperative Plan:** The Tribe and City each have interests, which are not mutually
13 exclusive, in the conservation and use of natural resources and in the identification and care of
14 cultural, historic, and archaeological resources in the Cedar River Municipal Watershed.
15 Therefore the parties will develop a Cooperative Plan with the objective of facilitating the
16 Tribe's exercise of its treaty rights to hunt and gather in the watershed. The Cooperative Plan
17 will be consistent with the following principles: (a) maintain high water quality standards, as
18 determined by the City, that meet requirements for Limited Alternatives to Filtration of drinking
19 water (cite statute); (b) fulfill the City's commitments to its water customers, in accordance with
20 the terms of Part 1 of this Settlement Agreement; (c) allow the City to meet its legal obligations
21 under the HCP and the associated Incidental Take Permits, plus any other duties that are legally
22 imposed on the City and not preempted by federal law; (d) protect against trespass; (e) maintain
23 the safety of people in the Watershed, including Tribal members, City staff, and members of the
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1 public; (f) identify, preserve, and protect historic, cultural and archeological sites and resources
2 within the Watershed; (g) maintain and improve wildlife habitat consistent with the needs of
3 listed species under the Endangered Species Act and the provisions of this Agreement; (h)
4 provide for Tribal member access to the Watershed to engage in traditional activities and to
5 exercise hunting and gathering rights reserved by Treaty; (i) provide, to the extent feasible and
6 consistent with the objectives above, for the establishment of special areas to cultivate traditional
7 resources of particular importance to the Tribe (e.g., berries, bear grass, and cedar trees); and (j)
8 minimize the risk of wildfires. The City retains the responsibility for managing land and habitat
9 in the Watershed. Development of the Cooperative Plan shall begin once this settlement is
10 entered by the Court, and the parties shall endeavor to complete the Plan within eighteen (18)
11 months.

12 F.1. Information Exchange: During the initial development of the Cooperative Plan, the
13 parties shall exchange information regarding their respective interests and limitations,
14 such as the Limited Alternatives to Filtration regulations that apply to the Watershed,
15 deed restrictions on land acquired from the U.S. Forest Service, the frequency and
16 context for Tribal use of the watershed, including anticipated studies and conservation
17 efforts as well as hunting, gathering and cultural use, projects the City anticipates in the
18 Watershed, and Tribal hunting regulations. This mutual education process will provide
19 both parties with important information for development of the Cooperative Plan.

20 F.2. Deer and Elk Research Program: The parties intend that the Cooperative Plan will
21 address ceremonial and subsistence hunting of game animals in the watershed by Tribal
22 members. However, the Tribe and City agree that further studies and collection of data
23 on elk, deer, and other game animals would enhance the parties' ability to make
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1 decisions regarding hunting. For a number of years the Tribe has studied elk populations
2 along the western flank of the Cascade Mountains. Therefore the Tribe will have lead
3 responsibility overall, in consultation with the City, to design and implement a 10-
4 yearresearch program on game animals in the Watershed. The parties recognize that the
5 City has unique experience and knowledge regarding habitat and species in the
6 Watershed. Therefore the City and Tribe will closely coordinate work relevant to the
7 goal described in F.2.2(d) utilizing the unique expertise of the City. The parties will
8 work closely with each other throughout the research program and will provide each
9 other with copies of all data, analysis, and reports. The research program will commence
10 in 2006 and continue through 2015.

11 F.2.1. Research funds: The City will fund the research program for its entire 10
12 year term by providing the Tribe \$250,000 (in 2005 dollars, adjusted for annual
13 inflation or deflation) each year. The funds shall be paid to the Tribe on or about
14 the first day of each year. With the concurrence of the City, the funds also may
15 be used to address issues related to Tribal gathering of natural resources within
16 the Watershed.

17 F.2.2 Research program goals: The goals of the research program are to: (a)
18 develop baseline data on deer and elk populations in the Watershed, their habitat
19 and their significant natural predators; (b) assess the relative importance of factors
20 affecting deer and elk populations; (c) identify strategies to sustain deer and elk
21 populations at levels sufficient for Tribal ceremonial and subsistence hunting; (d)
22 identify potential impacts of current and increased deer and elk populations on
23 other wildlife, fish, water quality, and the ecological objectives set forth in the
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Habitat Conservation Plan; and conduct studies on other game animals as necessary and as mutually agreed between the parties.

F.2.3. Tribal hunting during research period: Once this Settlement Agreement is approved by the Court, the Tribe may authorize ceremonial, subsistence, and management hunting by Tribal members, without waiting for completion of the Cooperative Plan. All hunts must be consistent with the initial Cooperative Plan (when completed), the HCP and associated ITPs, applicable federal law¹, the protection of high water quality and the requirements for Limited Alternatives to Filtration, the protection of fish habitat and the other ecological objectives identified in the HCP, Tribal regulations, and the Tribe's treaty right to hunt and gather.

F.2.4. Use of research: Once the deer and elk research program is completed, the City and Tribe shall amend the Cooperative Plan, if necessary, to reflect the research results and work to accomplish the objectives of sustaining deer and elk populations at levels sufficient for Tribal ceremonial and subsistence hunting while remaining consistent with the HCP and the associated ITPs, the protection of high water quality and the requirements for Limited Alternatives to Filtration, the protection of fish habitat and the other ecological objectives identified in the HCP, Tribal regulations, and the Tribe's treaty right to hunt and gather.

F.2.5 Amendment of Cooperative Agreement: Upon completion of the research study and thereafter at least yearly the parties shall consult on amendments to the Cooperative

¹ To the extent that compliance with this Settlement Agreement contemplates or requires compliance with the HCP, ITP state law or regulation, or local ordinance, it is understood that compliance is subject to any preemptive federal law, rule or agreement applicable to Indian tribes. This footnote shall apply throughout this Agreement as if set out in full.

1 Plan. Amendments shall be based on the best available science, the results of any study
2 conducted by the Parties under this Agreement and shall be consistent with the objectives
3 set out in Part F above. If the parties cannot agree on amendatory language the dispute
4 shall be resolved under Part M below. The parties shall attempt where feasible to
5 integrate the strategies and actions resulting from F2.2.c and amendments to the
6 Cooperative Plan, with normal and planned watershed management actions, such as fire
7 control, thinning, and road construction, to accomplish the goals set out in Part F above.

8 F.3 Tribal Hunting: The Cooperative Plan will continue to provide Tribal access to
9 the watershed for hunting and the Cooperative Plan shall be consistent with the terms of
10 this Agreement. Once the research program is completed and the Cooperative Plan has
11 been amended, if necessary, to reflect the research findings, the Tribe shall continue to
12 authorize hunting game animals within the watershed consistent with the Cooperative
13 Plan.

14 F.4. Habitat improvement work: The Tribe has undertaken, using its own resources,
15 certain projects within the Watershed, such as removing slash left from forest restoration
16 thinning projects, which reduces fire danger and improves the growth of berries gathered
17 by the Tribe. The City recognizes the benefit of these Tribal efforts and agrees that
18 habitat improvement work should continue.

19 F.4.1. Funds for habitat improvement: The City will pay the Tribe \$50,000 (in
20 2005 dollars) each year for ten years, to be used by the Tribe for projects such as
21 removing slash left from forest restoration thinning projects to reduce fire hazards
22 and enhance berry habitat. The funds shall be paid to the Tribe on or about the
23 first day of the year. It is understood that the funds provided under this section
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are not intended to relieve the City of any obligations it might have to manage the Watershed under applicable laws or as the land owner. If the Tribe agrees, the City may perform the work itself in lieu of paying the Tribe to do it.

F.4.2. Locations for habitat improvement: The Tribe shall perform habitat improvement work only in areas identified by the City as forest restoration thinning projects or other areas that the City agrees are appropriate locations.

F.4.3. Methods for habitat improvement: The Tribe shall confer with the City regarding the methods the Tribe intends to use and shall only use methods approved by the City. For example, the Tribe shall not burn areas in the Watershed without prior written approval by the City.

F. 5 Continuing collaboration: The Cooperative Plan shall provide for staff from both parties to meet at least four times a year to assess the effects of implementing actions identified in the Cooperative Plan, recommend needed changes to the Plan and adaptive strategies, exchange data, and identify other issues. Policy makers from the City and Tribe shall meet at least once per year unless they agree otherwise. Each party shall identify a coordinator who will be responsible for arranging meetings and handling related communications.

At this time the City's coordinator(s) is:

[insert name and contact info]

The Tribe's coordinator(s) is:

[insert name and contact info]

1 If a party changes its designated coordinator, the other party must be notified in writing
2 with a new coordinator identified.

3 F.6. Wood gathering: The Tribe and the City recognize that Tribal members utilize
4 both downed and live wood for traditional uses (e.g., fish curing) and to provide fuel in
5 the winter. The Cooperative Plan shall provide access (as provided in Section H below)
6 to Tribal members to gather downed wood for personal, non-commercial use by Tribal
7 members, as long as the wood is not needed to enhance fish habitat and is collected from
8 areas identified by the City. The Cooperative Plan also shall provide access to Tribal
9 members to take a limited amount of live wood for traditional uses by Tribal members
10 from areas identified in the Plan. The taking of wood shall not conflict with the HCP or
11 the associated Incidental Take Permits, or deed restrictions applicable to lands transferred
12 to the City by the United States Forest Service, or interfere with preserving and
13 enhancing fish habitat.

14 F.7 Access for gathering and traditional activities: Since time immemorial and
15 continuing today, Tribal members rely on the natural environment to supply food,
16 material for baskets, nets, canoes and other items, and as a place to conduct traditional
17 activities which include religious, spiritual and cultural ceremonies. The City and Tribe
18 agree that the Cedar River Municipal Watershed has been a historical location for Tribal
19 members to gather traditional natural resources and conduct traditional activities. The
20 City's preservation of the Watershed makes it an ideal location for Tribal members to
21 continue doing so. The Cooperative Plan shall provide Tribal members with access to the
22 watershed (as provided in section H below) for the purpose of gathering limited
23 quantities of traditional natural resources and engaging in traditional activities. Materials
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1 such as sand, rock, and gravel are not considered traditional resources unless the total
2 quantity gathered by each Tribal member is no more than enough for one sweat lodge.

3 **G. Tribal Regulatory Responsibility:** This Settlement Agreement provides that Tribal
4 members will have access to the Watershed for a number of purposes, including by
5 example, to gather traditional materials, including flora; carry out traditional ceremonies,
6 and hunt game animals. The City recognizes that the Tribe has substantial experience
7 over many years regulating the traditional activities of its members. The Tribe agrees to
8 enact regulations regarding the access of Tribal members to the Watershed, the activities
9 of its members in the Watershed, and the exercise of the Tribe's reserved treaty rights to
10 hunt and gather. The Tribe will afford the City the opportunity to comment on the
11 regulations applicable to the watershed before the Tribe adopts them. The regulations
12 shall: 1) be consistent with the access protocol established by the City and the Tribe (see
13 section H below); 2) prohibit activities that could harm water quality, fish habitat, or any
14 species listed as threatened or endangered under the ESA as applicable; 3) not conflict
15 with the HCP or the associated Incidental Take Permits; and, 4) shall be consistent with
16 any other condition legally imposed on the City.

17 **H. ACCESS PROTOCOL**

18 The City and the Tribe recognize and respect that members of both parties will be present
19 in the Watershed. The parties wish to: (a) set out in this Agreement basic principles and practices
20 that guide access to the watershed, and (b) undertake a process to develop written protocols for
21 access to the watershed consistent with the principles set out herein

22 **H.1. Development of Access Protocol:** The designated coordinators for the Tribe and
23 the City will meet, along with appropriate staff, to exchange information regarding the
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1 interests and concerns of both parties relative to watershed access. The developed written
2 access protocol will be consistent with the principles and practices set out in section H.2,
3 unless the parties agree otherwise. The written Access Protocol shall be developed
4 coincidentally with the Cooperative Plan set out in paragraph F of Part 2 of this Settlement
5 Agreement.

6 H. 2 Access Principles and Practices: Access shall be governed by the
7 following principles and practices unless changes are mutually agreed to by the
8 parties. The City and Tribe recognize that the City is in the process of converting
9 to a new access lock system for the watershed. This Settlement is intended to
10 address the access presently in place and the new system once it is in place.

11 a. General Access: The City will provide the Tribe with access devices for the
12 major gates, which currently are at Selleck, Landsburg, and Cedar Falls, and to the gate at
13 Cedar Notch. The City will also provide access devices for the gates along the south
14 boundary of the Watershed to Tribal staff who need them for purposes of wildlife
15 management.

16 1. Access when controlled by keys: For those gates where access is
17 controlled by keys (manual or cyber), the City shall provide: (i) two keys
18 for use by the Tribal Wildlife staff and two keys for use by Tribal
19 Fisheries staff who need them to access the Watershed for the purpose of
20 carrying out the terms of this Settlement or treaty co-management
21 responsibilities; (ii) two keys to Tribal Wildlife staff for access to the
22 south boundary gates; and (iii) a minimum of six (6) keys for use by
23 Tribal members. Where access is controlled by a card lock access cards
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will be provided as set out in H.2 b. The Tribe will be responsible for insuring that the keys and access cards are used solely by eligible Tribal members and staff for purposes that are consistent with this Agreement.

2. Electronic Access: When the City installs electronic card access devices at gates identified in Section H.2.a.1, the City will provide the Tribe with:

(i) a minimum of 15 access cards for use by individual Tribal members;
(ii) six cards for use by Tribal Wildlife and Fisheries management staff and (iii) two access devices for use by Wildlife management staff to access gates along the south boundary to carry out this Settlement Agreement or treaty co-management responsibilities. The access cards shall be numbered or otherwise identified. The cards shall be maintained in a secure location by the Tribe and provided only to authorized Tribal members and staff at the time of access. The Tribe will maintain a record of who checks out a particular card, the date of use, the return of the card, and the general purpose for access. The City will assign staff to coordinate with the Tribe to process and provide the individual access cards. The Tribe will notify the City promptly if a Tribal member or staff person is no longer entitled to such access. The Tribe will bear the cost of replacing access devices that are lost.

b. Management of authorized members: The Tribe shall take appropriate steps to (1) inform its members and management staff who will have access to the watershed concerning the safety of themselves and others in the watershed, including firearms

1 safety and safe driving; (2) assure that only Tribally authorized members and staff are
2 allowed access to the watershed; and (3) access is consistent with this Agreement.

3 c. Unless agreed otherwise by the parties, Tribal members who drive a vehicle in the
4 watershed shall comply with the same requirements as non-Tribal members who have
5 access to the watershed. Currently, the City requires that an operator of a motor vehicle
6 have a valid driver's license and the vehicle be insured.

7 d. The Tribe will notify the City's designated coordinator at least one business day
8 in advance of a Tribal member entering the watershed for purposes of hunting, gathering
9 or ceremonial use. The notification will include the general purpose of the visit, such as
10 gathering or hunting, the gate to be used, and the general part of the watershed that will
11 be visited. Tribal staff will also provide one business day's advance notice to the City's
12 coordinator when staff enters the Watershed, except under exigent circumstances when
13 Tribal staff needs immediate access. In such cases Tribal staff will attempt
14 contemporaneous notification. The Tribe will provide the City with a list of Tribal staff
15 with access to the watershed. Notice may be made by phone or e-mail.

16 e. Closed Areas: The Tribe will prohibit its members from hunting in those parts of
17 the watershed that are open to the general public for recreational use and those areas
18 where City staff regularly provide tours to public groups. These closed areas are
19 identified on the attached map.

20 f. Tribal Hunting: During the Tribe's hunting seasons, the City will notify the
21 Tribe's designated coordinator when and where City staff will be working in part of the
22 watershed on such projects as road decommissioning, forest thinning, surveying, and the
23 like. The Tribe will close such areas to hunting and disseminate the information to Tribal
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1 hunters by such methods as a 1-800 telephone line that hunters are required to check
2 before entering the watershed. The City will notify the Tribe when the work is completed
3 so that the Tribe can reopen the area to hunting.

4 g. Identification: Tribal members will carry their Tribal identification cards at all
5 times they are in the watershed and will show their identification card upon request by
6 City staff. Tribal staff will carry photo identification at all times they are in the
7 watershed and will show their identification upon request by City staff. In addition, the
8 Tribe will develop means for its members' vehicles to be readily identified by watershed
9 staff, such as: a Tribal tag on vehicles, and provision of license plate numbers to the City
10 for those Tribal members who enter the watershed frequently.

11 h. Prohibited acts: The Tribe will prohibit its members from: 1) copying the keys or
12 access devices or allowing people who are not members of the Tribe to use them: and
13 accessing the watershed without Tribal authorization; 2) camping overnight except as
14 part of a cultural or ceremonial practice where notice is given of the event, in which case
15 watershed staff shall use best efforts to avoid the ceremony location; 3) building fires in
16 the watershed except in designated locations that may be established by the City; 4)
17 using such vehicles as snowmobiles and ATVs in the watershed; 5) cleaning animal
18 carcasses near the water or allowing anything to enter the water that could harm water
19 quality. The Tribe will require its members to: 1) dispose of human and domestic animal
20 waste in portable toilets (sanicans) or to remove such waste from the watershed; 2)
21 remove all garbage that they generate from the watershed; 3) abide by limitations
22 imposed when industrial fire precaution levels are reached, such as not using chain saws
23 in the watershed; and (4) comply with all posted vehicle speed limits.

1 i. Reports: From time to time, but no less frequently than quarterly, the Tribe will
2 provide the City with a summary of the type of material (e.g. berries, medicinal plants,
3 other flora, deer, or elk) and the quantity of wood, deer, elk, and other big game animals
4 removed from the watershed. The reports need not identify precise locations of harvest or
5 the exact plant type.

6 j. Emergency Closures: The City will be entitled to close the entire watershed to all
7 non-City staff, including Tribal members, when there is a severe risk of wildfire or a
8 significant threat to public safety, such as notice by the federal government of a “red”
9 level terrorist threat. The City’s designated coordinator will notify the Tribe’s
10 designated coordinator immediately upon a City decision to close the watershed.

11 H 3. Enforcement: The Tribe will be responsible for enforcing all Tribal regulations
12 and other applicable laws that allow access to and regulate Tribally authorized activities
13 within the watershed. The Tribe will respond promptly to requests from the City for
14 enforcement. The City shall refer any alleged violations of Tribal regulations or other
15 applicable law to the Tribe for resolution, provided, however, that if watershed staff are not
16 able to reasonably identify a person as a Tribal member or staff person, the Parties agree that
17 the City may contact the King County Sheriff for enforcement assistance. The enforcement
18 process shall recognize the Tribe’s jurisdiction over its members while maintaining the safety
19 of the City’s staff and the public and the security of the City’s drinking water supply.

20 H.4. Road maintenance: In developing the access protocol, the City and Tribe shall
21 confer regarding the City’s plans for decommissioning roads, the City’s planned maintenance
22 of remaining roads, and the Tribe’s anticipated use of roads in the Watershed, particularly
23 any anticipated use that is likely to increase significantly the level of necessary maintenance
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(such as use by Tribal logging trucks). The City is not making any commitments in this Settlement Agreement to alter its plans for road decommissioning or to absorb costs for increased road maintenance or improvement.

H5. Special access to Cedar Falls: In order to provide access to Cedar Falls for Tribal elders, the Parties will jointly design a means for wheelchairs to approach the falls. The Parties will collaborate to construct the designed approach.

J. RELATIONSHIP TO OTHER AGREEMENTS

Should the City execute an agreement with another Indian tribe that provides greater access, management, and/or use rights within the Watershed, this Settlement Agreement shall be automatically amended to provide like rights to the Tribe, unless the Tribe elects to maintain this Settlement without change.

K. SETTLEMENT OF CLAIMS

Part 2 of this Settlement Agreement settles and resolves any and all claims the Tribe has or may have, in the past, present, and future, for harm to fish runs or the Tribe's treaty rights, resulting from construction or operation of the Cedar River Project or the HCP, except claims arising from the City's:

1. negligent or wrongful operation of the Cedar River Project;
2. breach of this Settlement Agreement;
3. breach of other agreements with the City to which the Tribe is a signatory;
4. failure to implement the HCP as required;
5. Violation of the Incidental Take Permits associated with the HCP.
6. Legal inability to carry out its obligations under this Settlement Agreement for any reason.

1 Provided however, if the Tribe causes the City to act in a manner that results in any of one
2 through five above, then the Tribe shall not have a cause of action. In addition, the Tribe's
3 future claims for harm to fish runs or treaty rights shall be reactivated if, following termination
4 or expiration of the HCP:

5 a. The City decides, without the Tribe's agreement, that it will not continue to
6 maintain and operate a sockeye hatchery that is substantially equivalent in
7 producing fry to the replacement hatchery in the HCP; or

8 b. The City decides, without the Tribe's agreement, that it will not continue
9 providing fish passage above Landsburg Dam in a manner substantially similar to
10 the fish passage permitted under the HCP.

11 L. TREATY RIGHTS

12 Nothing in Part 2 of this Settlement Agreement is intended to define the scope or
13 meaning of the Tribe's treaty right to hunt and gather. Should the access or management
14 agreements set out in Part 2 of the Settlement Agreement be terminated or made inoperable in
15 whole or in part, the Tribe is not precluded from bringing a prospective claim to enforce its treaty
16 right to hunt and gather. The City acknowledges that the federal courts have determined that the
17 Watershed is included in the Usual and Accustomed Fishing Grounds of the Tribe. This
18 Settlement Agreement does not address the Tribe's prospective treaty right to fish in the
19 Watershed and has no effect on the Tribe's prospective exercise of its treaty fishing rights.

20 M. DISPUTE RESOLUTION.

21 Part 2 of the Settlement Agreement shall be enforced under procedures set out in section
22 B. 4 of Part 1 and A.1 of Part 3 of the Settlement Agreement. Provided, that in those situations
23 where the issue in dispute involves hunting, gathering, cultural resources, or the use and
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management of the Watershed for hunting, gathering or cultural resource purposes, the Joint Committee established in B.4 of Part 1 of the Settlement Agreement shall be modified by replacing the Fish Commission with the Muckleshoot Tribal Hunting and/or Cultural Resources Committee, or their delegates, depending on the specific issue.

O. DRAFTS

Part 2 of this Settlement Agreement contains the full and final agreement of the parties superseding all previous oral representations and drafts.

SETTLEMENT AGREEMENT- MISCELLANEOUS - PART 3

A.1 ENFORCEMENT

a. This Agreement may be enforced as an Order of the Court, and to that end shall be incorporated into the order dismissing this case. The City waives any limitation it has that would affect the ability of the Tribe to enforce this Agreement. The Tribe hereby waives, in a limited manner, its sovereign immunity from suit in the United States District Court for the Western District of Washington, solely for the purpose of resolving disputes regarding interpretation or enforcement of this Agreement. To the extent that the United States District Court for Western Washington is found not to possess jurisdiction to enforce this Agreement, this Agreement may be enforced in any court with jurisdiction.

b. The City and Tribe both agree that there is no adequate remedy at law available to enforce this Agreement. Therefore, the City and Tribe agree that either party may invoke the equitable powers of the Court to enforce this Agreement, including, but not limited to, seeking affirmative injunctive relief to require either party to this

Agreement to carry out the terms thereof.

c. Prior to pursuing judicial remedies, the City and Tribe shall use their best efforts to resolve disputes that may arise under this Agreement through the Joint City-Tribal Policy Committee established under this Agreement. If those efforts fail to resolve the dispute, the parties will elevate the issues to their respective top leaders (the Mayor of Seattle and the Chairperson of the Tribal Council); provided that if the elevation of the unresolved dispute as provided in this sentence will result in immediate and substantial harm to either party, then the party aggrieved may seek immediate judicial relief.

A.2 OBLIGATIONS BINDING ON SUCCESSORS AND ASSIGNS

The obligations of the parties set out in this Agreement shall apply to, and be binding upon, the parties' assignees and successors-in-interest.

A.3 MODIFICATION

This Agreement may only be modified by written agreement duly approved by resolution or ordinance of the Muckleshoot Tribal Council and the Seattle City Council. Provided, however, that errors in the Agreement may be corrected and ambiguous provisions may be clarified by agreement of the Joint City-Tribal Policy Committee. The parties need not obtain approval of the Court to modify the Agreement, provided, any change shall be presented to the Court for inclusion in a Court Order.

A.4 NON-WAIVER

The failure of either Party to require compliance with any provision herein shall not be deemed to waive their ability to require compliance in the future.

A.5 RIGHTS NOT EFFECTED

Nothing in this Agreement is intended to define the scope or meaning of the Tribe's Treaty Rights or the City's water rights. The City does not intend, by entering into this

1 Agreement or by implementing this Agreement, to abandon any part of its water rights or claims.

2 A.6 FORCE MAJEURE

3 a. The term “force majeure” as used in this Agreement means events that are
4 beyond the reasonable control of a party (including its contractors and subcontractors)
5 and that did not occur through the fault or negligence of a party (including its contractors
6 and subcontractors), including, but not limited to: acts of God; and sudden natural events,
7 such as earthquakes, landslides, or wildfires.

8 b. If a party is wholly or partially prevented from performing its obligations
9 under this Agreement because of a force majeure event, that party will be excused from
10 fulfilling its obligation, but only to the extent that its performance was prevented. The
11 party’s failure to perform will not be considered a material breach of this agreement
12 provided that:

13 1. The party uses its best efforts to avoid and mitigate the effects of
14 the force majeure event; and

15 2. The failure to perform is of no greater scope and no longer
16 duration than is reasonably necessary due to the force majeure event; and

17 3. The party notifies the other party within a reasonable time
18 (normally no more than 48 hours) after discovery of the force majeure event. No
19 more than seven business days following discovery of the force majeure event,
20 the party will provide the other party with a written notice that will: identify the
21 force majeure event; estimate how the force majeure event will effect the scope or
22 duration of the party’s performance of its obligations; describe the measures the
23 party will take to avoid and minimize the effects of the force majeure event; and
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1 provide an estimated schedule for implementation of such measures.

2 c. When the party is able to resume performance of its obligations, it will
3 provide the other party with written notice to that effect.

4 A.7 NO THIRD PARTY BENEFICIARIES

5 No third party is intended to, or shall have, any rights under this Agreement. The parties
6 to this Agreement are the only ones with any right to enforce its terms.

7 A.8 EQUAL PARTICIPATION IN DRAFTING

8 The parties have participated equally in the drafting of this Agreement and have been
9 represented by legal counsel. Neither party shall be deemed to have more responsibility than the
10 other for any ambiguous language.

11 A.9 NOTICE

12 Each party shall designate, in writing, a person to receive on behalf of that party any
13 notices made pursuant to this Agreement. Notice shall be deemed to have been made when
14 personally served on the party's designee or on the third business day after the notice is sent by
15 first class mail, or an equivalent procedure. A party may change its designated person by
16 providing notice of the change in writing to the other party.

17 A.10 TERM OF THE AGREEMENT

18 This Agreement shall take effect the first business day after it is entered as an order by
19 the court and shall continue in effect in perpetuity, unless it is terminated by mutual agreement of
20 the parties.

21 A.11 POWER OF PARTIES

22 Each party hereto by signing this Agreement affirms that it has the power to enter into
23 this Agreement and to enforce its terms.

City of Seattle

Muckleshoot Indian Tribe

By: _____

By: _____

Its: _____

Its: _____

Date: _____

Date: _____